IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4419 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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N M THAKORE - Petitioner
Versus
MUNICIPAL COMMISSIONER - Respondent

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Appearance :
MR SM MAZGAONKAR for Petitioner.
MR PRANAV G DESAI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 21/12/2005

ORAL JUDGMENT

1.The petitioner working as Deputy Executive Engineer in Vadodara Municipal Corporation has filed this petition under Article 226 of the Constitution of India challenging the order dated 12.05.1989 passed by the Disciplinary Authority holding the petitioner guilty of the charges levelled against him and imposing upon him a penalty of stoppage of his two increments with future effect, and directing the respondent – Disciplinary Authority to restore the petitioner to the stage of pay which he would have drawn from the date of effect of the penalty imposed, as if the order of penalty was not passed at all and directing that the difference payable to the petitioner be paid to him within a period which may be prescribed by this Court. The petitioner has also prayed for the direction to the respondent to regularize the period of suspension of the petitioner in

accordance with law after giving an opportunity to the petitioner to show cause why the said period should not be treated otherwise than as duty for all purposes.

2.The petition was admitted on 01.10.1990. An affidavit-in-reply is filed on behalf of the respondent – Corporation on 08.10.1990.

3.One of the grounds raised in the present petition while challenging the order passed by the Disciplinary Authority is that the respondent – Corporation has not supplied the copy of the Inquiry Officer's Report. In absence of that report, it was not possible for the petitioner to meet with the charges levelled against him and finding arrived at by the Disciplinary Authority.

4.Mr. S.M. Mazgaonkar, learned advocate appearing for the petitioner has relied on the decision

of the Hon'ble Supreme Court in the case of *Mohd. Ramzan Khan reported in AIR 1988 S.C. 1338* and also in the case of *Managing Director, EICL, Hyderabad etc. V/s. B. Karunakar, etc., AIR 1994 S.C. 1074* wherein the Hon'ble Supreme Court has observed that in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court / Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court / Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. Mr. Mazgaonkar has,

therefore, submitted that the respondent – Corporation may be directed to supply the copy of the report of the Inquiry Officer and after going through the said report, the petitioner would look into it as to whether any prejudice is caused to him for non-supply of the copy of the report of the Inquiry Officer and if he is still aggrieved by the order passed by the Disciplinary Authority, he would resort to the appropriate remedy either by filing writ petition or by filing an appeal before the Appellate Authority. He has, therefore, submitted that this limited indulgence be shown by this Court and the order passed by the Disciplinary Authority may be quashed and set aside.

5.Mr. Pranav G. Desai, learned advocate appearing for the respondent – Corporation has submitted that as such, the Disciplinary Authority has passed the order with regard to stoppage of two

increments with future effect and hence, it is not a case of dismissal or removal from service. Moreover, in the decision of the Hon'ble Supreme Court relied on by the petitioner in the case of *Managing Director, EICL, Hyderabad etc. V/s. B. Karunakar, etc., AIR 1994 S.C. 1074 (supra)*, the Hon'ble Supreme Court has made it very clear that the delinquent is entitled to copy of the report of the Inquiry Officer so as to enable him to make representation to the Disciplinary Authority against it. Since the said decision made the law expressly prospective in operation, the law laid down therein will apply only to those orders of punishment which are passed by the Disciplinary Authority after 20th November, 1990. This is so, notwithstanding the ultimate relief which was granted in Mohd. Ramzan Khan's Case which was per incuriam. He has, therefore, submitted that as a matter of fact, the petitioner may be supplied copy of the

report.

6.After having considered the submissions made by the parties and after going through the decision of the Hon'ble Supreme Court, the Court is of the view that the interest of justice would better be served if the respondent – Corporation is directed to supply copy of the report of Inquiry Officer and after going through the said report, if the petitioner is of the view that any prejudice has been cased to him because of non-supply of the report, it is open for him to approach the appropriate authority ventilating his grievance against the impugned order passed by the Disciplinary Authority. The Court, therefore, without adjudicating or disturbing the order passed by the Disciplinary Authority directs the respondent – Corporation to supply the copy of the report of the Inquiry Officer to the petitioner and thereafter, if the petitioner is

aggrieved and decides to file appropriate proceedings either before the Appellate Authority or before this Court, the same can be done. While filing such proceedings, the Appellate Authority would not be influenced by the order passed by the Disciplinary Authority or the fact that this Court has not entertained the petition on that ground.

7. Subject to the aforesaid direction and observations, this petition is accordingly disposed of.

[K.A. PUJ, J.]

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